Grand Islander Health Care Center, Inc. *and* United Health Care Employees, a Division of the Rhode Island Workers Union, Local 76, Seiu, AFL-CIO. Case 1-CA-18311

July 20, 1981

DECISION AND ORDER

Upon a charge filed on February 9, 1981, by United Health Care Employees, A Division of the Rhode Island Workers Union, Local 76, SEIU, AFL-CIO, herein called the Union, and duly served on Grand Islander Health Care Center, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint on March 18, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 18, 1980, following a Board election in Case 1-RC-16904, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about January 29, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. The complaint also alleges that since on or about January 29, 1981, Respondent has failed and refused to furnish the Union with requested information relevant and necessary for the purpose of collective bargaining. On March 27, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 27, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 1, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its opposition to the Motion for Summary Judgment, as in its answer to the complaint, Respondent contends that it is not obligated to bargain with the Union because the certification issued to the Union in Case 1-RC-16904 is invalid by reason that the Board erroneously denied Respondent's request to void the election and reopen the preelection hearing. Respondent further contends that it was not required to produce the wage and employment information requested by the Union because such information was not necessary for or relevant to the Union's performance as the exclusive bargaining representative. Respondent also denies both that the Union requested bargaining and that it refused to bargain. Finally, in its opposition to the Motion for Summary Judgment, Respondent argues that it possesses "newly discovered evidence" and that the existence of "special circumstances" precludes the granting of the General Counsel's motion.

The General Counsel submits that Respondent's contentions should be discounted as attempts to relitigate issues which were or could have been disposed of by the Board in the prior representation proceeding. We agree.

A review of the entire record, including that in Case 1-RC-16904, reveals that a representation hearing, in which Respondent did not participate,[2] was held on May 23, 1980. Thereafter, on June 18, 1980, the Regional Director for Region 1 issued a Decision and Direction of Election in which he found a unit of all service and maintenance employees in Respondent's facility to be appropriate. Pursuant to this decision, a secret-ballot election was held on July 14, 1980, which resulted in a tally of 44 votes for, and 40 against, the Union, with 6 determinative challenged ballots. Pursuant to Section 102.69 of the Board's Rules and Regulations, the Regional Director conducted an investigation of the challenged ballots. On August 12, 1980, the Board agent assigned to the investigation was informed that Respondent was engaging a different

[1] Official notice is taken of the record in the representation proceeding, Case 1-RC-16904, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] Although notified of date, time, and place of the hearing on at least three occasions, once by certified mail, no representative of Respondent appeared at the preelection hearing. On May 22, 1980, the day before the hearing, counsel for Respondent requested a postponement to a future, unspecified date. That same day, the request was denied by the Regional Director for Region 1 in light of previous unsuccessful attempts by the Regional Office to determine alternative hearing dates convenient to Respondent and its counsel.

attorney as its counsel of record. Respondent's new attorney filed a written appearance by letter on August 18, 1980, and requested that the election be voided and that the preelection hearing be reopened because at least 10 ineligible temporary employees were improperly permitted to vote due to (1) improper conduct on the part of Respondent's former counsel and (2) the Board's conducting the representation hearing *ex parte*. On September 22, 1980, the Regional Director issued a Supplemental Decision in which he found that Respondent's claims regarding the alleged temporary employees constituted postelection challenges which would not be considered by the Board. The Regional Director therefore denied Respondent's request to void the election and reopen the preelection hearing. He further overruled challenges to the ballots of three employees, sustained the challenge to the ballot of one employee, and found that the challenges to the ballots of two employees could best be resolved after a hearing.

Respondent filed a timely request for review of the Regional Director's Supplemental Decision, requesting that the Board sustain the challenge to the ballot of the employee Rockstraw, the challenge to whose ballot had been overruled by the Regional Director, and rule that the election should be voided and the preelection hearing be reopened. On December 4, 1980, the Board issued a telegraphic order granting Respondent's request for review with respect to the eligibility of employee Rockstraw and denying the request for review in all other respects. The Board ruled, *inter alia*, that the ballots of the remaining two employees who had been deemed eligible by the Regional Director should be opened and counted. Pursuant to the Board's ruling, the two determinative challenged ballots were opened and counted and a revised tally of ballots was issued by the Regional Director on December 12, 1980. The revised tally of ballots showed that the Union had received a majority of the valid votes cast in the election and that the remaining three challenged ballots were not determinative of the results of the election. Accordingly, on December 18, 1980, the Regional Director certified the Union as the exclusive bargaining representative of the employees in the appropriate unit.

Thereafter, the Union by letter dated December 31, 1980, requested that Respondent furnish it with information in order that it could prepare for contract negotiations.[3] Respondent, by letter dated January 29, 1981, acknowledged receipt of the Union's letter and stated it would not honor the request for information because it considered the Union's certification to be invalid.

Respondent, in its answer to the complaint, denied that the Union requested it to bargain collectively. However, the Union's letter requesting information is tantamount to a request for bargaining. Furthermore, in light of Respondent's reply letter it would have been futile for the Union to follow its request for information with a literal request for bargaining.[4]

Respondent also denies that it failed and refused to bargain collectively with the Union as the exclusive representative of the employees in the unit. This defense fails because Respondent's January 29, 1981, letter to the Union, rejecting its request for information, is sufficient evidence of Respondent's refusal to bargain.

Finally, Respondent contends that the information requested by the Union was not necessary for, and relevant to, the Union's performance of its functions as the exclusive bargaining representative of the employees in the appropriate unit. It is well established, however, that such information is presumptively relevant for purposes of collective bargaining and must be provided upon request to the employees' bargaining representatives.[5] Furthermore, it is well settled that a union is not required to demonstrate the exact relevance of such information unless the employer has submitted evidence sufficient to rebut the presumption of relevance.[6] Respondent has not attempted to rebut the relevance of the information requested by the Union. Rather, it stated in its letter to the Union that it would not furnish the information requested because it believed the Union's certification was invalid. For the reasons stated below regarding the relitigation of issues previously decided in a representation proceeding, this latter assertion is not a meritorious defense.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[7]

Respondent does not offer to adduce at a hearing any evidence that can properly be characterized as

[3] The information requested by the Union is as follows: the name, home address, job title, rate of pay, date of hire, and date of last raise for all employees in the bargainining unit, and a list of all benefits provided to the employees in said unit.

[4] *Living and Learning Centers, Inc.*, 251 NLRB 284 (1980).

[5] *Lighthouse for the Blind of Houston*, 248 NLRB 1366, 1367 (1980); *Verona Dyestuff Division Mobay Chemical Corporation*, 233 NLRB 109, 110 (1977).

[6] *Curtiss-Wright Corporation, Wright Aeronautical Division* v. *N.L.R.B.*, 347 F.2d 61 (3d Cir. 1965), enfg. 145 NLRB 152 (1963).

[7] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

newly discovered or previously unavailable, nor does it adequately support its claim that special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. Rather, it is clear from Respondent's opposition to the Motion for Summary Judgment and from the record as a whole that all issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Rhode Island corporation, maintaining its principal office and place of business at 333 Green End Avenue, Middletown, Rhode Island, where it is now and continuously has been engaged in the operation of a proprietary nursing home and health care facility. Its annual gross revenues exceed $100,000. Annually it purchases goods and services valued in excess of $10,000 directly from points located outside the State of Rhode Island.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Health Care Employees, A Division of the Rhode Island Workers Union, Local 76, SEIU, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees of the Respondent at its Middletown, Rhode Island facility, including nurses' aides, orderlies, laundry room employees, housekeeping employees, dietary aides, dishwashers and cooks, but excluding business office clerical employees, licensed practical nurses, technical employees, registered nurses, professional employees, managerial employees, guards and supervisors as defined in the Act.

2. The certification

On July 14, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 1 designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on December 18, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about December 31, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit, and to furnish it with information relevant to, and necessary for, the purpose of collective bargaining. Commencing on or about January 29, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit, and to provide it with the requested information.

Accordingly, we find that Respondent has, since January 29, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and has refused to furnish it with information relevant and necessary for the purpose of collective bargaining as requested, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order that Respondent provide the Union, upon request, with information relevant and necessary for collective bargaining.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Grand Islander Health Care Center, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Health Care Employees, A Division of the Rhode Island Workers Union, Local 76, SEIU, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time service and maintenance employees of the Respondent at its Middletown, Rhode Island facility, including nurses' aides, orderlies, laundry room employees, housekeeping employees, dietary aides, dishwashers and cooks, but excluding business office clerical employees, licensed practical nurses, technical employees, registered nurses, professional employees, managerial employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 18, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 29, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, and to provide it with requested information relevant and necessary for the purpose of collective bargaining, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Grand Islander Health Care Center, Inc., Middletown, Rhode Island, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Health Care Employees, A Division of the Rhode Island Workers Union, Local 76, SEIU, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time service and maintenace employees of the Respondent at its Middletown, Rhode Island facility, including nurses' aides, orderlies, laundry room employees, housekeeping employees, dietary aides, dishwashers and cooks, but excluding business office clerical employees, licensed practical nurses, technical employees, registered nurses, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Refusing to provide the above-named Union, upon request, information relevant and necessary for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, bargain collectively with the above-named labor organization by furnishing it with the following relevant wage and employment information concerning unit employees: the name, home address, job title, rate of pay, date of hire, and date of last raise for all employees in the bargaining unit; and a complete list of all benefits presently being provided to employees in the bargaining unit such as, but not limited to, health and welfare, paid sick days, vacation, pension bonus system if working below state minimum staffing patterns, number of paid holidays, and amount of compensation if an employee works on a holiday.

(c) Post at its Middletown, Rhode Island, facility copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Boars" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Health Care Employees, A Division of the Rhode Island Workers Union Local 76, SEIU, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide the above-named Union, upon request, information relevant and necessary for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time service and maintenance employees at our Middletown, Rhode Island facility, including nurses' aides, orderlies, laundry room employees, housekeeping employees, dietary aides, dishwashers and cooks, but excluding business office clerical employees, licensed practical nurses, technical employees, registered nurses, professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL, upon request, bargain collectively with the above-nmaed Union by furnishing it with the concerning relevant wage and employment information titled, rate of pay, date of hire, and date of last raise for all employees in the bargaining unit; and a complete list of all benefits presently being provided to employees in the bargaining unit such as, but not limited to, health and welfare, paid sick days, vacation, pension, bonus system if working below state minimum staffing patterns, number of paid holidays, and amount of compensation if an employee works on a holiday.

GRAND ISLANDER HEALTH CARE CENTER, INC.

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